

MINUTES

Tennessee Board of Examiners for Land Surveyors

The Tennessee Board of Examiners for Land Surveyors met on Wednesday, June 16, 2010 at 9:00 a.m. in the 2nd Floor Conference Room of the Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN.

Those present were: Jackie Dillehay, Chairman; Tim Lingerfelt, Vice-Chairman; David Cagle, Board Member; Robert Herndon, Assistant General Counsel for the Board; Susan Lockhart, Executive Administrative Assistant; and Donna Moulder, Administrative Director for the board. Board Member Sue Braly was absent.

CALL TO ORDER: The meeting was called to order at 9:08 a.m. by Chairman Dillehay.

AGENDA: The agenda was then reviewed. Mr. Lingerfelt made a motion to accept the agenda as amended, seconded by Mr. Cagle. The motion carried unopposed.

MINUTES: The minutes of the previous meeting were then reviewed. Mr. Lingerfelt made a motion to accept the minutes as written, seconded by Mr. Cagle. The motion carried unopposed.

COMPLAINT REVIEW:

Mr. Herndon presented the following Legal Report for the Board's consideration:

1. Complaint No.: L09-SUR-RBS-2009021171

The complaint was previously presented. The complaint alleges that the Respondent, a licensed land surveyor, prepared three different mappings of the same parcel, one of which conflicts with the other two. The two that agree place the platted land within a flood plain. One of these was filed and recorded, which seriously affected the value of the subject parcel. The Respondent denies misconduct. All three plats are included in the file. At the January 13, 2010 meeting, the Board elected to have a Board member review the complaint to establish competency issues based on this new information; the property is located in East Tennessee. Mr. DILLEYHAY was assigned the review and requested further time at the April 28, 2010 meeting in order to make a proper determination.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. LINGERFELT recuses; quorum not available for vote. Tabled until full board is present.

2. Complaint No.: L08-SUR-RBS-2008010871

This complaint involves possible fraud and involves East Tennessee and was assigned to Mr. DILLEHAY for review. **FACTS:** The complaint is filed against an unlicensed individual employed by a licensed land surveying company and is under the supervision a licensed company. The Board determines that the complaint holds no merit because the Respondent is not subject to discipline in these circumstances.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Cagle. MOTION CARRIED.

3. Complaint No.: L09-SUR-RBS-2009020251

This complaint alleges misconduct in Middle Tennessee and was assigned to Mr. CAGLE for review. **FACTS:** A thorough review of the presented evidence did not reveal any indication of misconduct against which discipline could be assessed.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Cagle made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Lingerfelt. MOTION CARRIED.

4. Complaint No.: L10-SUR-RBS-2009027001

This complaint alleges misconduct in East Tennessee and was assigned to Mr. CAGLE for review. **FACTS:** A review of the evidence shows a payment dispute that was not within the contract and amounts to a valid business decision.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Calge. MOTION CARRIED.

BREAK – The Board recessed from 10:20 a.m. to 10:30 a.m.

MEETING RESUMED -

5. Complaint No.: L10-SUR-RBS-2010000371

This complaint alleges incompetence in East Tennessee and was assigned to Mr. CAGLE for review. FACTS: No competency issues were revealed from the review of the complaint file.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Cagle. MOTION CARRIED.

6. Complaint No.: L10-SUR-RBS-2010000621

This complaint alleges misconduct in West Tennessee and was assigned to Mr. LINGERFELT for review. FACTS: The Respondent's involvement in this matter included indications of communication errors and the transmission of false information relative to the possession of the relevant documents. The Board identified violations of rule 0820—4—.02 [PROPER CONDUCT OF PRACTICE], 0820—4—.04 [PUBLIC STATEMENTS] and 0820—4—.07 [MISCONDUCT].

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to issue a Consent Order for a civil penalty of \$1,000 and a requirement to take and prove attendance at 8 hours of ethics course(s), seconded by Mr. Cagle. MOTION CARRIED.

7. Complaint No.: L10-SUR-RBS-2010002211

This complaint was opened by the Board and alleges incompetence in East Tennessee. The matter was referred to Mr. DILLEHAY to review. FACTS: The Respondent used a method of indicating a water boundary to a meandering bluff line, which remains fixed. This method is improper and requires the inclusion of bearings and distances for the points along the bluff. As rendered, the drawing is sub-standard.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Cagle made a motion to issue a Letter of Caution indicating the above determination, seconded by Mr. Lingerfelt. MOTION CARRIED.

8. Complaint No.: L10-SUR-RBS-2010003631

This complaint alleges misconduct and malpractice in West Tennessee and was assigned to Mr. LINGERFELT for review. FACTS: A review of all the documents presented did not reveal anything other than proper and professionally produced documentation.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Cagle. MOTION CARRIED.

BREAK – The Board recessed from 11:30 a.m. to 11:35 a.m. Ms. Moulder and Ms. Lockhart did not return to the meeting until the Board broke for lunch at 12:15 p.m.

MEETING RESUMED -

9. Complaint No.: L10-SUR-RBS-2010005841

This complaint alleges unlicensed practice of land surveying by a licensed engineer in West Tennessee and was assigned to Mr. LINGERFELT for review. FACTS: The review of the case shows that the engineer produced land survey documents under the Respondent's engineer seal for a parcel in a residential area. The homeowner's association criteria for that area allow the acceptance of a plat produced by either an engineer or a land surveyor, and the Respondent traveled upon that statement. However, this allowance does not permit unlicensed conduct.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to issue a Consent Order for a civil penalty of \$2,000 for unlicensed practice, seconded by Mr. Cagle. MOTION CARRIED.

ADDITION: Unrelated to the disciplinary matter, the Board wishes a letter to be sent to the homeowner's association advising that this provision be amended to restrict plat production to licensed land surveyors only.

10. Complaint No.: L10-SUR-RBS-2010009911

This complaint alleges incompetence in East Tennessee and was assigned to Mr. DILLEHAY for review. FACTS: A review of the facts of the case show an

allegation of "unprofessional conduct," yet no evidence of such was found within the facts of the case.

Recommendation: Accept the Board member's recommendation.

RULING: Mr. Lingerfelt made a motion to dismiss due to lack of grounds for discipline, seconded by Mr. Cagle. MOTION CARRIED.

11. Complaint No.: L08-SUR-RBS-2008024731

Mr. Herndon advised that this complaint was previously reviewed and closed twice by the Board but additional information had been obtained for the Board's review.

RULING: Mr. Lingerfelt made a motion to dismiss the complaint with prejudice, seconded by Mr. Cagle. MOTION CARRIED.

A gentleman appeared before the Board and his name was withheld to avoid prejudice regarding a complaint that he had filed with the Board. Mr. Herndon explained the complaint process and left the meeting with the gentleman to find his file and determine where his complaint is in the process. *(Mr. Herndon did not return to the meeting until after the Board met with the Engineer Committee.)*

BREAK – The Board recessed for lunch from 12:15 p.m. to 12:50 p.m.

MEETING RESUMED -

NEW BUSINESS

Review education vs. experience for licensure (email from Robert Freeland): The Board determined that there is no provision to allow his request and advised Ms. Moulder to respond to Mr. Freeland.

Review Exam Scores: Mr. Lingerfelt advised that eight (8) passed the FS exam; eight (8) passed the PS exam; and eight (8) passed the TS exam resulting in five (5) new PLSITS and ten (10) licensees. He further advised that only eight (8) out of forty (40) passed the TS exam but those who passed scored very high so he felt it was a fair exam.

Sign PLSIT Wall Certificates: Ms. Moulder presented certificates to the Board for the signatures.

Review letter from John M. Payne concerning marking a contour line: The Board advised Ms. Moulder to respond to Mr. Payne on their behalf advising that

land surveyors should make a working effort to use chords and offsets. If chords are prepared by bearing distances then they must be monumented.

Review continuing education request from D. Michael North, TLS #2370: The Board advised Ms. Moulder to provide Mr. North's information to the education committee for consideration. They further advised that according to the minutes of the February 2010 meeting, the Board previously determined that all courses must be preapproved.

Review continuing education request from Randall A. Mercier, TLS #1974: The Board advised Ms. Moulder to provide Mr. Mercier's information to the education committee for consideration.

Review letter from Michael Lacey regarding Mortgage Parcel Surveys: The Board began discussing Mr. Lacey's letter.

BREAK – The Board recessed for to attend a meeting with the Engineering Committee for the Tennessee Board of Architectural and Engineering Examiners from 1:55 p.m. to 3:20 p.m.

MEETING RESUMED -

Mr. Herndon returned to the meeting at this time and the Board revisited the discussion they were having before the break regarding Mr. Lacey's letter. The Board advised Ms. Moulder to respond to Mr. Lacey on their behalf and advise that a surveyor should disclose any potential problems to their client in writing to prevent any questions regarding the professional conduct of the surveyor.

Review email from Andrew Beck regarding photogrammetric mapping, LiDAR, ground control: The Board advised that Rule 0820-3-.07(2)(o) addresses this question and that ground control work needs to be certified. Ms. Moulder was advised to respond to Mr. Beck on the Board's behalf.

Appoint new member to the CE Advisory Committee: An email from Mr. Paul Henson was reviewed regarding his resignation from the CE Advisory Committee. Mr. Lingerfelt made a motion to appoint Andrew Stokes of West Tennessee to the CE Advisory Committee, seconded by Mr. Cagle. The motion carried unopposed.

Review email from Phillip Allen regarding subdivision roads: Mr. Allen asked if it is within the standards of practice for surveyors to design subdivision roads. The Board advised that TCA 62-18-102(3) defines surveying and advised Ms. Moulder to forward a copy to Mr. Allen.

Discuss Rules of Professional Conduct Chapter: Chairman Dillehay advised that he extended an invitation to the Board of Directors for TAPS to offer any

input for the Board's consideration and he has not received any suggestions at this time. Mr. Lingerfelt suggested that the Board explore more information regarding electronic signatures. The Board decided to table this matter for discussion at their next meeting to allow more time to prepare for a discussion.

Discuss items for the spring/summer newsletter: The content for the newsletter was discussed.

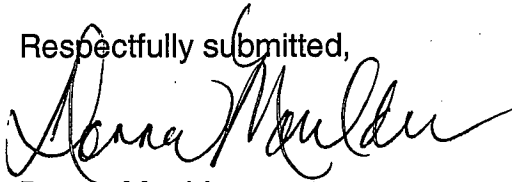
NCEES Annual Meeting in Denver, CO update: Ms. Moulder advised that the request for Chairman Dillehay and Mr. Lingerfelt to attend this meeting has been submitted and is awaiting approval.

Update on Rules progress with the AG: Ms. Moulder advised that the Rules were sent to the Attorney General's Office on June 14, 2010.

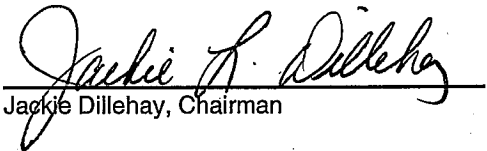
Review email from Floyd Smith (member of the CE Committee): Ms. Moulder advised that she previously approved the courses discussed in the email at the recommendation of two of the committee members.

The board adjourned at 4:30 p.m.

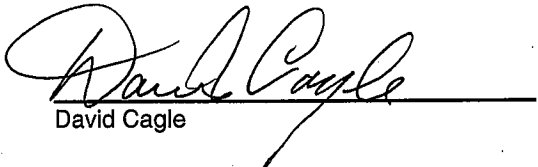
Respectfully submitted,



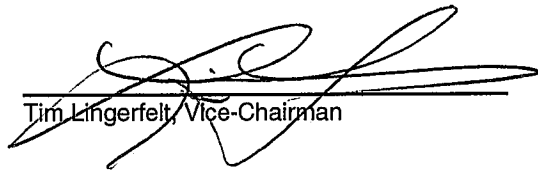
Donna Moulder
Administrative Director



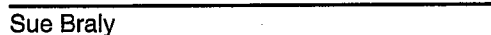
Jackie Dillehay, Chairman



David Cagle



Tim Lingerfelt, Vice-Chairman



Sue Braly